

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Kansas City, Missouri

FIRSTLINE TRANSPORTATION SECURITY, INC.

Employer

and

Case 17-RC-12297

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC

Petitioner

and

Case 17-RC-12298

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO

Petitioner

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.¹
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) (7) of the Act for the following reasons:

This case presents the issue whether the 500 security screeners and 45 to 50 lead security screeners employed by FirstLine Transportation Security, Inc. (the Employer) at the Kansas City International Airport are guards under the Act. For the reasons set forth below, I find that the security screeners and lead security screeners are guards within the meaning of Section 9(b)(3) of the Act, and the petitions must therefore be dismissed. Section 9(b)(3) of the Act dictates that neither the United Steelworkers of America, AFL-CIO, nor the International Association of Machinists and Aerospace Workers, AFL-CIO (the Petitioners) can be certified to represent the security screeners and lead

¹ The Hearing Officer admitted into evidence Region 20's Decision and Direction of Election in Covenant Aviation Security, LLC, Case 20-RC-17896, issued by Region 20's Acting Regional Director on January 27, 2004. Covenant Aviation Security addresses the same issues raised in the instant case. The Acting Regional Director for Region 20 carefully considered and very thoroughly addressed the propriety of asserting jurisdiction in these circumstances. I take administrative notice of Region 20's Decision, and I agree that in the instant case, assertion of jurisdiction over the Employer is proper and would effectuate the purposes and policies of the Act, particularly where the parties have stipulated to the Board's jurisdiction.

security screeners as guards, because both Petitioners stipulate that they admit to membership employees other than guards.

The Petitioners each seek a unit of all full-time and regular part-time transportation security screeners and lead transportation security screeners employed by the Employer at the Kansas City International Airport, excluding office clerical employees, professional employees, managerial employees, guards and supervisors, as defined by the Act. The Employer agrees that a unit of all security screeners and lead security screeners would be an appropriate unit, but contends that the security screeners and lead security screeners are guards, and that the Petitioners therefore cannot be certified to represent them, because the Petitioners also represent non-guard employees. The Petitioners, on the other hand, contend that the duties and responsibilities of the security screeners and lead security screeners do not establish that they are guards within the meaning of Section 9(b)(3), because they cannot physically detain passengers, are not armed, do not patrol the facility, and if they encounter trouble, they are required to refer the matter to the appropriate supervisors.

BACKGROUND

The parties stipulated that the following information, contained in Region 20's Decision and Direction of Election in Covenant Aviation Security, LLC, Case 20-RC-17896, is equally applicable to the Employer's operations at the Kansas City International Airport. The parties stipulated that where the San Francisco International Airport is referenced in that Decision's "background" section, reference to the Kansas City International Airport should be substituted. Based on that stipulation, I find the following background facts:

In response to the terrorist attack on the United States on September 11, 2001, Congress on November 19, 2001 passed the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, 115 Stat. 597, 49 U.S.C. Section 114, making airport security

a direct federal responsibility and creating the Transportation Security Administration (TSA) as an entity within the Department of Transportation. Congress provided that the head of the TSA, the Under Secretary of Transportation for Security, would be responsible for the security screening of all passengers and property carried aboard passenger aircraft, and the hiring, training and employment standards of security screening personnel. ATSA Section 101(a), 49 U.S.C. Sections 114(b)(1), 114(e). Congress required the Under Secretary to establish the position of Federal Security Manager at each airport to oversee the screening of passengers and property. ATSA Section 103, 49 U.S.C. Section 44933. The actual work of screening passengers and property was to be done by employees of the Federal Government except that Congress provided in ATSA Section 110(b), 49 U.S.C. Section 44901(a), that the Under Secretary could contract with a “qualified private screening company” to perform screening operations upon application of an airport operator during a two-year pilot period at no more than five airports, or after three years following enactment of the legislation at any airport, subject to the conditions set forth in ATSA Section 108(a), 49 U.S.C. Sections 44919, 44920.

Kansas City International Airport is one of the five airports chosen for the pilot program allowing the TSA to contract with private companies to perform passenger and baggage screening operations. The other four airports are located in Tupelo, Mississippi; San Francisco, California; Rochester, New York; and Jackson Hole, Wyoming.

The ATSA sets forth employment and training standards for security screeners employed by the Federal Government, and gives the head of TSA the authority to establish programs for the hiring and training of such personnel, as set forth in 49 U.S.C. Section 44935. Among the qualifications required under the statute are United States citizenship; having a satisfactory or better score on the Federal Security Screening Personnel Selection examination; having no impairment due to illegal drugs, sleep deprivation, medication or alcohol; not presenting a national security risk; having a high school diploma or its equivalent; and possessing the requisite mental and physical abilities necessary to screen and read monitors and x-ray machines. Included

at Section 44935(i) of the ATSA is a prohibition of the right to strike by individuals employed in screening positions.

The ATSA applies these standards to private contractors hired under the private program. Thus, Section 44919(f) of the ATSA states:

Qualified Private Screening Company - A private screening company is qualified to provide screening services at an airport participating in the pilot program under this section if the company will only employ individuals to provide such services who meet all the requirements of this chapter applicable to Federal Government personnel who perform screening services at airports under this chapter and will provide compensation and other benefits to such individuals that are not less than the level of compensation and other benefits provided to such Federal Government personnel in accordance with this chapter.

In this regard, Section 44919(h) also states as follows:

Termination of contracts - The Under Secretary may terminate any contract entered into with a private screening company to provide screening services at an airport under the pilot program if the Under Secretary finds that the company has failed repeatedly to comply with any standard, regulation, directive, order, law, or contract applicable to the hiring or training of personnel to provide such services or to the provision of screening at the airport.

In November 2002, Congress passed the Homeland Security Act (HAS), 6 U.S.C. Section 111, creating the Department of Homeland Security as an Executive department and the TSA was transferred to this department.

THE EMPLOYER'S OPERATIONS

The parties stipulated that the following individuals comprise the Employer's management hierarchy: Don Olson - Vice-President of Operations; Barry Baker - Director of Operations; Roe Moraites, Bill Tucker, Bobby Mims, Thomas Lowe, and Ron Greathouse - Duty Managers. The parties further stipulated that these individuals can hire, fire, transfer, suspend, layoff, recall, promote, or discharge employees, or effectively to recommend those actions. Based on the parties' stipulation and the supervisory authorities the named managers possess, I find that Olson, Baker, Moraites, Tucker, Mims, Lowe, and Greathouse are supervisors as defined in the Act.

The Employer employs 52 Supervisory Security Screeners at the Kansas City International Airport. The parties stipulated that Supervisory Security Screeners possess the authority to hire, fire, transfer, suspend, layoff, recall, or effectively to recommend those actions. Based on the parties' stipulation and the authorities the Supervisory Security Screeners possess, I find the following individuals employed in the position of Supervisory Security Screeners are supervisors as defined in the Act: Tommy Abbey, Debra Anderson, Brian Ballinger, Stephan Busch, Lesley Cooksey, Paula Correll, Johnny Ellison, Walter Engman, Michael Erdmann, Greg Euler, Sandra Floyd, Frank Geister, Rose Glinowiecki, Wendy Graves, Hilaria Grigsby, John Laeberle, Therik Haines, Thomas Hanley, Shaun Hurley, Sandra Johnson, Dale Jones, Perry Jones, Donald Long, Norma Lueske, Michael Lynn, Don Masters Jr., Jeremy McClure, Robert McCray, Theresa McCray, Robert McDaniel Jr., Diane McIntosh, Cynthia Miller, Joe Nave, Sheila O'Meara, Fred Pearl, Karon Pipkin, David Powell, Matt Rabus, Floyd Ramsey, Katherine Rardon, Drew Rigdon, Sandra Schultz, Jim Schumacher, Ronald Shryock, Lee Sisk, Jacob Sledd, Cheryl Steeby, Monty Stillwell, Rick Stuart, Galen Wellesley, Cheryl Whitt, and Raymond Wyenandt.

As set forth above, the Employer contracts with TSA to provide all of the security screening for passengers and baggage entering the air transportation system at the Kansas City International Airport. It is the responsibility of the Employer's employees to protect passengers, airport employees, and property from danger, by screening passengers and baggage for explosive devices and for a plethora of other items that might be used as weapons by terrorists or others.

The Employer's hiring and training of security screeners is coordinated between the Employer and TSA. Potential security screeners are solicited through job fairs held in the Kansas City area and advertised in various print and radio media, as well as limited television advertising. The most recent job fair was conducted in July 2004, at the Kansas City Expo Center, and drew over 1030 applicants.

The initial screening of those applicants involves completion of a pre-assessment questionnaire designed to disqualify certain individuals prior to entering into the formal hiring process. Items on the questionnaire include various disqualifying factors, such as certain crimes, lack of citizenship, drug use, and default in tax payments or child support payments, among others. The Employer's Human Resources Director quickly reviews the questionnaires for obvious disqualification, and the remaining potential employees are asked to attend short orientation meetings. During those meetings, the potential employees learn about the broad duties of a security screener, including monitoring passengers through the magnumeter, otherwise known as the walk-through metal detector, physically searching passengers' baggage, and frisking passengers. After the orientation sessions, the potential employees are directed to a series of computer terminals to complete an online application. The applications are forwarded to a company called CPS, which is a contractor of TSA, hired to conduct the more intensive screening of the applicants, including medical screening, drug screening, physical abilities assessment, and fingerprinting and filling out a National Security Questionnaire - Form 86 for a national security background check. This CPS screening leads to a list of qualified candidates, which is provided to the Employer for further action. Of the 1030 applicants who attended the July 2004 job fair, only 53 successfully passed the screening process.

The Employer resumes the process of hiring applicants after CPS has concluded its screening process. The Employer calls the qualified applicants, and offers them employment as security screeners, contingent upon completion of 65 hours of classroom training, 115 hours of on-the-job training, availability to work any shift, certifications in both passenger and baggage screening, and completion of a 90-day probationary period. Absent a college degree, applicants with no security or military experience are paid a lower starting wage than applicants with security or military experience. The new security screeners begin their employment with an orientation session. The new security

screeners are told that their job is directly linked to the security of the nation, and they are required to watch a video entitled “Remembering 9/11,” which is meant to impress upon them the seriousness of their job. Employees are also addressed by Richard Curasi, the Director of Security for TSA’s Kansas City office. Curasi explains the shared mission of the Employer and TSA, which is to protect persons and property. Employees then learn about the classroom training they will undergo for the next 9 days, culminating in testing devised and administered by TSA to establish that the employees fully understand the security procedures they are responsible for enforcing.

Once the orientation is concluded, the new security screeners begin their 9-day TSA-formulated and mandated training in the duties of their jobs as security screeners. Lockheed Martin, as a contractor of TSA, does most of the dual-function security screener training at airports utilizing dual-function security screeners. However, the Employer also has instructors approved by TSA for dual-function training. The 65 hours of classroom and lab instruction includes thorough training on operation of the walk-through metal detector, operation of the hand held metal detector, and methods for full-body pat-downs, including emphasis on screening and searching passengers with disabilities. The methods used for full-body pat downs are very specific, and are drawn from law enforcement agencies’ practices when frisking suspects. Security screeners also receive training in the operation of the x-ray machines used to search passengers’ physical property, together with considerable time spent on image interpretation when using the x-ray machines. The security screeners are trained in techniques to enable them to identify the various types of weapons that have been confiscated in airports around the country, including man-made bombs, otherwise known as improvised explosive devices. The training also focuses on the operation of various brands of explosive trace detection devices that test passengers’ carry on items for traces of explosives. Additionally, because of the dual functioning of the security screeners employed at the Kansas City International Airport, there is

significant training in screening procedures for checked baggage, including use of the CTX machine. At the conclusion of the training, the new security screeners are required to pass TSA standardized testing before moving on to the on-the-job training portion of their instruction.

Aside from a brief tour of the facility on day six of the training, the on-the-job training is the first time the new security screeners see the actual processes used by the security screeners at the airport. During the 115 hours of on-the-job training, the new security screeners perform the duties and responsibilities of a security screener in both the passenger and checked baggage areas. TSA requires 80 hours of training in the passenger security areas and 35 hours of training in the baggage security areas. The 80 hours of training is broken down to encompass training on manning the exit door (2 hours), operating the walk-through metal detector (8 hours), use of the hand-held metal detector (10 hours), passenger body search techniques (10 hours), use of explosives trace devices (25 hours), use of the x-ray machine to screen passenger carry-on baggage (20 hours); and handling screening of passengers with disabilities (5 hours). As noted above, on-the-job training for the baggage screening is 35 hours. However, in order to run the CTX machine, which is a large x-ray machine for checked baggage, a security screener must have an additional 20 hours of on-the-job training. During their on-the-job training, security screener trainees wear a different color band on their identification badges, but to the traveling public, a trainee would be indistinguishable from a seasoned security screener. Upon successful completion of the on the job training, the security screeners are certified by TSA. The actual airport duties learned by the security screeners in the on-the-job training are described below.

The Kansas City International Airport is comprised of three separate terminals, terminal A, terminal B, and terminal C, each containing ticketing and gate areas for the various airlines serving the greater Kansas City area. Approximately 2.4 to 2.5 million passengers depart from the Kansas City International Airport each year. There are separate screening areas for passengers and checked

baggage at each of these terminals. There are a total of 11 passenger screening and 6 baggage screening areas in the 3 terminals.

As set forth above, the Employer's security screeners are hired and trained to conduct security screening at both the passenger and checked baggage screening areas. Because they conduct both passenger and baggage screening, the security screeners are termed dual-function employees by the Employer. The nature of the dual function requires that security screeners maintain their skills weekly, in both the passenger screening and checked baggage screening areas. As such, security screeners' weekly schedules incorporate both passenger and checked baggage screening shifts. The security screeners work either an a.m. or a p.m. shift, with work start times staggered for full coverage. The security screeners' shift assignments, days off, and airline assignments are based on bidding, with seniority determining the security screeners' placement. Most of the security screeners work 5 days a week, in 8-hour shifts. However, about 20 of the Employer's security screeners work 4 days a week, in 10-hour shifts. The Employer's security screeners are not scheduled to man the airport 24 hours a day. Instead, the Employer's security screeners are on duty at the passenger and baggage security checkpoints from the time the departure gates open in the morning until after the last flight has departed the airport in the evening. Overall 24-hour security at the airport is handled by the Kansas City Airport Police, who have a facility in the middle of the three terminal buildings. There are about 80 to 100 Kansas City Airport police officers who are positioned throughout the airport complex.

Security screeners and lead security screeners wear uniforms provided by the Employer. These uniforms consist of either a long-sleeved or short-sleeved shirt provided by the Employer. On each sleeve of the shirt is a patch with the wording "Transportation Security - FirstLine." On the pocket of the shirt, security screeners wear a patch in the shape of a shield with the wording "FirstLine." Security screeners also wear a small "FirstLine" patch on the neckband of their shirt. Aside from the

long and short-sleeved uniform shirts, security screeners can also wear an Employee-provided pullover sweater, either long or short sleeved, and winter-weight coat, both of which incorporate the shield patch.

Each of the 11 passenger screening areas is staffed with at least 6 security screeners and a security screening supervisor. The 6 security screeners rotate every 30 minutes through the 6 security screening positions contained in the passenger security area. The six security screening positions in the passenger area include a security screener stationed at the walk-through metal detector, who directs the passengers through the metal detector after the passenger has placed his carry-on items, and personal belongings on the conveyor belt for x-ray screening. If the passenger triggers an alarm when walking through the metal detector, the passenger is moved to a holding area, where the next security screener takes control of the passenger for use of the hand-held metal detector. There are two security screeners manning the hand-held metal detector security positions, one male and one female. A security screener of each gender is required on the hand-held metal detector position because of the sensitive nature of the physical search of passengers. Female security screeners are responsible for the physical search of female passengers and vice versa. If the hand-held metal detector identifies a metal object, then a pat-down or frisk will be conducted. If the pat-down identifies a problem, a supervisor is called over to help resolve the issue.

The fourth security screener is assigned to screen the bags as they move through the x-ray machine. If the screener operating the x-ray machine identifies a suspicious item, the screener calls for a search of the bag. The screener who operates the explosive trace device generally steps over to handle the bag search. The security screeners use a set of security procedures to check if the bag is clean. If a prohibited item is found in the search, the security screener either calls the security screener supervisor, or uses a telephone located by the x-ray machine to call the Kansas City Airport police.

While waiting for the supervisor or police, it is the security screener's job to seize the questionable bag and the passenger's other belongings. During this time, the security screeners deny the passenger access to not only the questionable bag, but also to all of the passenger's other personal belongings. If the passenger attempts to leave the area after their belongings have been seized, the security screener verbally orders the passenger to stay in place, and uses eye contact to attempt to control the passenger's movement. However, if the passenger ignores the order of the security screener, the security screener is not authorized to physically detain the passenger, and instead, attempts to keep the passenger in sight in order to alert the police of the passenger's whereabouts.

The fifth security screener position in the passenger screening area handles an explosives trace device, or ETD. This security screener position is responsible for selecting passengers' belongings that have passed through the x-ray machine for further testing using the ETD equipment. No evidence was elicited concerning the methodology for selection of baggage for trace explosives testing, because the selection methods are considered sensitive security information. The security screener takes a swab of the bag selected, and places the sample in the ETD machine. If the sample tests positive for explosive traces, the security screener alerts the supervisor, who then alerts the airport police.

The sixth security screener position in the passenger screening area is the exit door monitor. The security screener monitoring the exit door is responsible for assuring that passengers or other individuals do not enter through the exit door. Since the passenger area is a sterile area, all passengers, flight crews, passenger escorts, and even the Employer's security screeners must go through the screening process prior to entering. The exit door monitor assures that all individuals pass through the screening process. If a breach of the exit door is attempted, the security screener is trained to physically block the doorway and to instruct the individual to reenter the sterile area through the

screening area. The only individuals exempt from the screening process are the Kansas City Airport Police and certain airline personnel.

As is explained above, the Employer's security screeners are dual-function employees and are certified to screen both passengers and checked baggage. There are two checked baggage screening areas at each of the three terminals. The baggage screening areas are generally proximate to the airline ticket counters. The security screeners normally screen passengers' checked baggage prior to the passenger proceeding to the ticket counter. The security screeners use a formula to randomly screen certain of the checked baggage. However, at two of the checked baggage screening areas there are CTX machines, which x-ray all checked baggage. The CTX machines are similar in appearance to an MRI, but on a larger scale. The CTX machines require the security screener to monitor the detection system of the CTX, and to intercede to physically search baggage only when the machine indicates a suspicious object. In order to operate the CTX machine, a screener must have an additional 20 hours of on-the-job training. Additionally, to remain certified to operate the CTX machine, security screeners must have 3 to 4 hours of weekly training on the machine.

Security screeners have daily security briefings. Additionally, security screeners receive 3 hours of training each week; 2 hours of general training, and 1 hour of x-ray imagery training. Security screeners have mandatory annual re-certification testing dictated by TSA, which includes a written test, imagery hands-on testing, and passenger screening hands-on testing.

ANALYSIS

Section 9(b)(3) of the Act defines a "guard" as "any individual employed ... to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises...." The Board has held that employees are guards if they are charged with guard responsibilities that are a substantial part of their job functions. The Wackenhut

Corporation, 196 NLRB 278 (1972); A. W. Schlesinger Geriatric Center, 267 NLRB 1363 (1973).

Guard responsibilities may include enforcement of rules, authority to compel compliance with those rules, training in security procedures, weapons training, conducting security patrols, control of access to the premises, and wearing of uniforms or exhibiting other emblems of guard status. See The Boeing Co., 328 NLRB 128 (1999). However, the fact that the employees do not carry firearms does not detract from their guard status or conclusively show that they are not guards within the meaning of the Act. Allen Services Co., Inc., 314 NLRB 1060 (1994); A. W. Schlesinger Geriatric Center, supra at 1364. Neither does the fact that guards cannot arrest or physically detain a suspect defeat their status as guards. It is enough that they possess and exercise responsibility to observe and report infractions, which is an essential step in the procedure for enforcement of an employer's rules to protect property or the safety of persons. The Wackenhut Corporation, supra at 279; A. W. Schlesinger Geriatric Center, supra at 1364; Allen Services Co., Inc., supra at 1062.

I find that, in the circumstances of the instant case, the evidence clearly establishes that the security screeners and lead security screeners are guards as defined in the Act. It is of no import that the security screeners are not protecting only the property of the Employer, but rather are protecting the property of the Kansas City Airport, the airlines, and the traveling public. The Board has not limited the definition of guards to individuals protecting only the property of their own employer or protecting against the actions of their fellow employees. See Corrections Corp. of America, 327 NLRB 577 (1999); The Wackenhut Corporation, supra; American District Telegraph Co., 160 NLRB 1130 (1966); Watchmanitors, Inc., 128 NLRB 903 (1960); NLRB v. American District Telegraph Co., 205 F.2d 86 (3rd Cir. 1953).

I further find that the duties and responsibilities of the security screeners and lead security screeners are traditional guard functions, and that the performance of these duties is their sole job function. The security screeners are the front-line security force protecting departing passengers and

their property, as well as the property and personnel located at the Kansas City Airport, from potential security hazards. The security screeners enforce the rules and policies established by the TSA to protect the traveling public from harm. In that vein, the security screeners detain and physically frisk passengers for weapons and explosives, using law enforcement techniques and state of the art explosive detection devices. The security screeners also search and confiscate passengers' personal property when the screeners determine that those items could contain potentially hazardous items. The security screeners have the responsibility to restrict passengers from retrieving any of their personal items when they have determined that a potential threat exists. Additionally, the security screeners are authorized to restrict access to the sterile gate areas of the airport. The ability of the security screeners to restrict access to the sterile areas of the airport is not limited to authority over departing passengers. The security screeners are also responsible for authorizing access to the sterile areas for their fellow employees, airline flight crews, and non-credentialed law enforcement officers. While the security screeners are not authorized to physically restrain passengers, they do utilize security techniques to physically block access, issue verbal commands intended to control a suspect, and eye contact techniques to further control an individual's movement.

Not only do the job functions of the security screeners and lead security screeners support the contention that they are guards, but the intensive security training, both in the classroom and on the job, further support that finding. The security screeners receive substantial training in weapons detection through imagery interpretation and use of the explosives trace devices. Security screeners are thoroughly trained in physical search methods, which mirror those techniques used by other law enforcement agencies. The security screeners also undergo substantial background checks prior to hire. Additionally, while previous security experience is not required, the Employer screens for such prior experience and increases employee compensation for applicants with prior security experience.

The security screeners also wear uniforms that are guard-like in appearance. The breast pocket of the uniform shirt includes a patch in the shape of a shield. The arm patches further designate the wearer as “transportation security.”

The fact that security screeners are not authorized to physically detain passengers should they fail to cooperate, but rather to report violations to their supervisors or the Kansas City Airport Police, does not defeat their guard status. It is sufficient that they possess and exercise responsibility to uncover and report security infractions, because this is an essential part of the Employer's procedures for protecting the traveling public. A. W. Schlesinger Geriatric Center, supra at 1364; The Wackenhut Corporation, supra at 279. Additionally, the evidence establishes that the duties of the security screeners go well beyond the responsibility to merely observe and report. In the instant case, the security screeners have the authority to physically search baggage and passengers, to confiscate property, and to detain passengers. These duties far exceed mere observation and reporting responsibilities, and constitute the security screeners’ primary work responsibilities, which are the essential link in the Employer’s endeavor to safeguard passengers, airport employees, and public and private property from threat. As such, and based upon the entire record, I find that the security screeners and lead security screeners are guards as defined in the Act.

I also find Madison Square Garden, 325 NLRB 971 (1998), cited by the International Association of Machinists and Aerospace Workers (Petitioner Machinists Union) in its brief, to be inapposite. In Madison Square Garden, the Board held that ticket takers and ushers who were sometimes assigned to act as inspectors and “guards,” patting down patrons to ensure that they brought no prohibited items into the arena, and restricting access to certain areas of the arena, were not guards under the Act. The “guard-like” duties of the inspectors and “guards” in Madison Square Garden were merely incidental to their basic job functions as ushers and ticket takers, and, when performing their “guard-like” duties, the duties were performed in concert with an equal number of law enforcement

officers. In the instant case, the security screeners' duties go well beyond those of the inspectors in Madison Square Garden. The security screeners are thoroughly trained in security techniques, including methods for identifying weapons and explosives. The security screeners also have the authority to conduct secondary searches of property or persons, without first seeking the approval of a supervisor or law enforcement officer. The security screeners are further authorized to confiscate property, and to restrict passenger access to that confiscated property. Finally, the security screeners wear a uniform that is like that of a guard, including a shield patch on the breast pocket of their uniform shirt, and patches on the sleeves indicating that they are "transportation security."

Petitioner Machinists Union also posits in its brief that the Board's decision in Wackenhut, which was heavily relied on by the Acting Regional Director in Covenant Aviation Security, incorrectly expanded the scope of the definition of guards, and that the Board's decisions in The Boeing Company, 328 NLRB 128 (1999) and BPS Guard Services, Inc., 300 NLRB 298(1990) correctly narrowed the definition of guard, thereby implicitly overruling Wackenhut. Contrary to that assertion, the Board's rulings in The Boeing Company and BPS Guard Services, Inc. did not reverse the Board's decision in Wackenhut. Instead, in those cases the Board dealt with the recurring topic of whether firefighters are guards under the Act. In keeping with its traditional firefighter analysis, the Board held that in the absence of traditional police and plant security functions, firefighters whose overall responsibility was the prevention and suppression of fires, were not guards within the meaning of the Act, despite the fact that they might have incidental or minor "security" duties. These cases did not overrule Wackenhut, or mandate that in situations such as the instant case, where the employees also perform traditional police and security functions, a finding of guard status is inappropriate. The security responsibilities of the security screeners in the instant case are not incidental to or a minor part of their job functions. Instead, the security functions of the security screeners are their sole job function, and as such, I find that they are guards as defined in the Act.

Finally, I am cognizant of Petitioner Machinists Union's concern that Section 9(b)(3) of the Act be narrowly construed, because employees found to be guards are deprived of the full organizational and bargaining rights afforded other employees. I further recognize that the purpose in enacting Section 9(b)(3) was to shield employers of guards from the potential conflict of loyalties arising from the guard union's representation of non-guard employees, or its affiliation with other unions who represent non-guard employees. However, unlike Petitioner Machinists Union, I believe that the conflict of loyalties concern *is* applicable in the instant situation. Thus, the evidence shows that Petitioner Machinists Union represents a unit of 350 airline employees at the Kansas City International Airport, including fleet service agents, customer service agents, fuelers, and baggage service agents. A conflict of loyalties could arise if Petitioner Machinists Union represented employees at the Kansas City International Airport who were engaged in a strike. If the security screeners were also represented by Petitioner Machinists Union, that situation could easily create the very conflict of loyalties that Section 9(b)(3) was enacted to eliminate, i.e. a conflict between supporting fellow Union members or providing security to the traveling public and airport property. See Wells Fargo Corp., 270 NLRB 787,789 (1984) (In discussing the possibility of a conflict of loyalties the Board held that "The danger of divided loyalty which Congress sought to eliminate may not be quite so far-reaching in the case of armored-car guards [as opposed to plant guards], but it is, nevertheless, present. A conflict of loyalty could arise, for example, if the guards should be called upon to deliver money or valuables to one of their customers whose employees were represented by the same union which represented the armored-car guards, and the employees of the customer were on strike and picketing the premises of the customer."); Brink's, Incorporated, 226 NLRB 1182, 1184 (1976); NLRB v. American District Telegraph Co., 205 F.2d 86, 89 (3rd Cir. 1953). .

In conclusion, because the security screeners and lead security screeners are guards, and because both Petitioners admit non-guards into their membership, the Petitioners cannot be certified to represent the petitioned-for employees. Accordingly, I will not direct an election.

ORDER

IT IS HEREBY ORDERED that the petitions filed herein be, and they hereby are dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by October 15, 2004.

Date October 1, 2004

at Overland Park, Kansas

/s/ D. Michael McConnell
Regional Director, Region 17
